

MAY 13 2008
 RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Case No. 07-03527WHA

AFFIDAVIT OF FREDERICK C. ROESTI IN
SUPPORT OF
MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT

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FIRST AMENDED COMPLAINT

Date: May 29, 2008
Time: 8:30 a.m.
Court: 9

Honorable William Alsup

**Case No. 07-03527 WHA
Declaration of Frederick C. Roesti
in Support of Motion for leave to
Filed First Amended Complaint**

1 on May 9, 2008, to which this affidavit is attached. Said motion is timely filed so that it will
2 be heard at the same as the Summary Judgment motion filed by Defendants.

3
4 3. The original complaint in this matter was filed in pro per by Plaintiff Edward E.
5 Anderson in superior court of the State of California.

6 4. Defendants removed this case to federal under diversity jurisdiction, claiming that
7 Defendants AMR and American Airlines were citizens of Florida, where the bulk of their
8 operation is located.

9 5. I substituted in for plaintiff, and we requested Early Neutral Evaluation to
10 determine if the parties could reach a settlement in good faith, after Defendants had an
11 opportunity to take the deposition of Plaintiff Anderson, but before Plaintiff commenced
12 discovery.

13 6. On about October 25, 2007, Plaintiff's counsel was notified of the appointment of
14 the Early Neutral Evaluator, Attorney John Beers. The deposition of Plaintiff Anderson was
15 taken on or about January 8, 2008. The first Early Neutral Evaluation session commenced on
16 or about January 9, 2008, and adjourned to be continued for a second mediation session.
17 However, when the second session on April 15, 2008, ended shortly after it convened with no
18 resolution.

19
20 7. During this period of time, Plaintiff and I communicated with attorneys in Boston,
21 Massachusetts who were representing skycaps in a class action suit regarding the legality of
22 the two dollar baggage fee. At the time, it looked like Plaintiff might be a member of the class
23 in the Massachusetts case. At the time of the second Early Neutral Evaluation session,
24 Plaintiff and I learned that the Federal Court in the Massachusetts case had declined to certify
25 a class. Therefore, Plaintiff was excluded from the class in the Massachusetts case.

1 8. During this same period of time, on or about April 15, 2008, I learned that the
2 Federal District in the Massachusetts case, while declining to certify the class, had ruled that
3 the American Airlines two dollar per baggage service charge in Boston, Massachusetts was in
4 violation of the Massachusetts' Commonwealth Law governing gratuities.
5

6 9. After April 15, 2008, I then conducted my own research and investigation and
7 determined that California Labor Code Section 351 provided a comparable California State
8 Cause of Action regarding the two dollar per baggage service charge by Defendant American
9 Airlines at the San Francisco International Airport with regard to Plaintiff Edward E.
10 Anderson.

11 10. The requested leave to amend the complaint to include a Cause of Action for
12 violation of Labor Code Section 351 does not prejudice Defendant American Airlines in any
13 way because the original complaint, while not pleading a violation of Labor Code Section 351,
14 included factual allegations regarding Defendant's two dollar per bag service fee and the
15 manner in which it was implemented, and alleged tortious causes of action for negligent and
16 intentional infliction of emotional distress, as well as allegations of retaliation, harassment,
17 age and race and civil rights discrimination under the California Fair Employment and
18 Housing Act. So, Defendants have made aware at all times of the factual issues surrounding
19 two dollar baggage charge, and its alleged violation of California Labor Code Section 351.
20

21 11. The requested leave to amend the complaint is timely filed to be heard at the same
22 time as Defendants' motion for summary judgment on May 29, 2008.

23 12. The requested leave to amend the complaint is filed in good faith because the
24 factual allegations in the original complaint, and as investigated, support the filing of an
25 amended complaint to allege violation of Labor Code Section 351.
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1 13. The requested leave to amend the complaint is also timely filed in good faith
2 because discovery was delayed by Plaintiff –and Plaintiff believed in good faith there was an
3 understanding of the parties to limit discovery to Plaintiff’s production of documents to
4 Defendants and the taking of Plaintiff’s deposition by Defendants --while the Early Neutral
5 Evaluation process attempted to settle the case. After the first Early Neutral Evaluation
6 Session, when the focus was to be on damages, Defendants refused to respond to informal and
7 formal requests to produce documents, so that Plaintiff will need to file a motion to extend the
8 discovery deadlines in light of protracted Early Neutral Evaluation process from January 9,
9 2008 to April 15, 2008, and is the process of that. However, Plaintiff at his deposition was
10 questioned about the two dollar per baggage charge, and in response to Defendants’ discovery
11 requests, Plaintiff produced all of his documentation regarding the baggage he had handled for
12 American Airlines under its two dollar per baggage service fee policy.
13

14 14. I am a sole practitioner, who has practiced employment discrimination and labor
15 law for some thirty years. I have represented Plaintiff in other employment and personal
16 injury cases. When Plaintiff first came to me about this case, my calendar was full with other
17 matters. However, when Defendants removed Plaintiff’s case to federal court, I reviewed my
18 calendar and made room to handle this case with anticipation that the Early Neutral Evaluation
19 process would be successful, given the documentation that Plaintiff provided to me and to
20 Defendants. When the Early Neutral Evaluation was not successful, and I had obtained
21 additional information about the Massachusetts case involving the same two dollar baggage
22 fee policy, I made the decision to request the court for leave to amend the complaint.
23

24 I have read the above affidavit and affirm under penalty of perjury under the laws of
25 the State of California and the laws of the United States of America, that it is true and correct
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1 and that I have executed this Declaration on May 9, 2009 in San Francisco, California.
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3 *Frederick C. Roesti /s/*

4 Frederick C. Roesti

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